IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9565 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAJIDBHAI MEHMUDBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SAMIR J DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Challenge has been made by the petitioner by this petition under Article 226 of the Constitution to the order of the respondents dated 24th August, 2000 under which he was ordered to be detained as a bootlegger in exercise of powers as conferred under the Gujarat

Prevention of Anti Social Activities Act, 1985.

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging this order of the respondent-detaining authority but as this petition deserves to be accepted only on one ground, it is not necessary to refer, deal with and decide all those contentions.

#. In para-24 of the petition, the petitioner made a grievance that the vital documents like report of F.S.L. in cases from Sr. Nos. 2 to 6 in the grounds of detention, which has been shown as pending investigation, the statements of witnesses in all those criminal case are recorded under section 161 of Cr.P.C., 1973 of the persons who were present at the time of committal of the offences and the members of the raiding party and chargesheet papers in respect of Case No.1 in grounds of detention, were not given to the petitioner. It is further averred that this grievance has not been made by the petitioner before this Court but in the representation submitted by the petitioner against the detention order, i.e. dated 31-8-2000, this grievance has been made.

#. Reply to the special civil application has been filed by the detaining authority. There are three affidavits in this respect. First affidavit is sworn on 31-10-2000. Second affidavit is sworn on 18-1-2001 and third affidavit is sworn on 9-2-2001, copy of which is submitted in the Court today. From this affidavit, I find that the grievance made by the petitioner regarding non-supply of F.S.L. report in the cases at Sr. No.2 to 6 mentioned in the grounds of detention, it is suffice to say that in three matters, these reports were supplied. However, in respect of two offences which are registered as Cr. No.1483/2000 and 1530/20000 F.S.L report were not supplied and for non-supply thereof cogent and justified reason has been given i.e. the same were received on 13-1-20001 in the office of the detaining authority. Though learned counsel for the petitioner submitted that the F.S.L. report in these two matters were prepared earlier to 13-1-2001 and even after 13-1-2001, the copies have not been supplied to the petitioner, I do not consider it to be necessary to finally decide on this question in this matter as it is not in dispute that copies of the statement of witnesses recorded in the criminal complaint at Sr. No.2 to 6 in the grounds of detention as well as the papers of chargesheet in the criminal complaint at Sr. No.1 therein have not been supplied to the petitioner.

#. Learned counsel for the respondents during the course of arguments, has failed to explain why the copies of these documents have not been supplied. Otherwise also, in reply to the special civil application, the detaining authority replied to para-24 of the petition as under:

> 16. With reference to para-24 of the petition, I say that all the vital and relevant documents which have been relied upon by me for passing the order of detention against the detenue have been supplied to the detenue. Therefore the contention raised by the petitioner in this para is not tenable at law.

#. It is not specifically denied that the chargesheet papers of the criminal complaint at Sr. No.1 of the grounds of detention have not been supplied to the petitioner. Moreover, from this reply, I find that it is admitted that in respect of the criminal complaint at Sr. No. 2 to 6 in the grounds of detention, statement of witnesses were recorded under section 161 of Cr.P.C.. It is also further to be taken to be admitted that these statements of witnesses were recorded before the order of detention has been made in the present case. Reply has been given that the material which has been considered, the copy thereof has been given to the petitioner. So from this the suggestion of the detaining authority is that the statement of witnesses recorded under section 161 of Cr. P.C. were not considered by him while passing the order of detention of the petitioner. If it is correct, then certainly though at this stage, I am not expressing final opinion, but prima-facie, this approach is wholly perverse, arbitrary and it cannot be said to be a genuine subjective satisfaction recorded by the authority. The statements of witnesses in the criminal complaint i.e. registered ceases which are made basis for the detention of the petitioner are material and vital documents and those are to be considered by the detaining authority before recording subjective satisfaction. Be that as it may. It cannot be said that those documents are not vital documents for the petitioner and he has a legitimate right to have the copies of those documents. It is not the law not it is the case in reply nor it is contended by the learned counsel for the respondents that the detenu has no right to claim copies of documents which do not form the part of the compilation which has been placed for consideration and recording subjective satisfaction by the authority. The detenu has all the right and in fact it is in accordance with the principles of natural

justice also to pray for supply of those vital documents which are relevant to the material used by the detaining authority to form the subjective satisfaction. The subjective satisfaction has been formed on the basis of the registered criminal complaint against the petitioner. When the statements of witnesses have been recorded in those criminal complaints certainly it is a relevant material as well as vital document for the petitioner and he can made use of the same in making representation against the detention order. The documents are to be supplied by the detaining authority on demand by the petitioner. It is not the case that demand has not been made and despite of the demand made, copies of these vital documents have not been given to the petitioner. Non-supply of the copies of these vital documents certainly adversely affects the right of the petitioner to make effective representation as guaranteed to him under Article 22(5) of the Constitution of India.

#. As a result of the aforesaid discussion, only on this ground, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 24-8-2000 is quashed and set aside. The petitioner Sajidbhai Mehmudbhai Shaikh, the detenu, at present in Junagadh District Jail at Junagadh be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. In the facts of this case and more particularly when the counsel for the respondents fairly come up with the defence during the course of arguments, no order as to costs.

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